

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

KOO KWANG JUNG,

Petitioner,

vs.

JACK PALMER, *et al.*,

Respondents.

3:12-cv-00382-LRH-WGC

ORDER

Petitioner has submitted a document to the court in which he appears to challenge his criminal conviction in state court. (ECF No. 1-1.) On the first page of the document, petitioner states that he is challenging the judgments in two criminal cases from the Second Judicial District Court for the State of Nevada, Case Number CR03-0894 and Case Number CR04-0140. (*Id.*) Because petitioner is in custody pursuant to the judgment of a state court, this court previously construed this action as a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 and required petitioner to submit his petition on the court-approved form. (ECF No. 3.)

In response to the court's order, petitioner has submitted a petition on the court-approved form for actions arising under 28 U.S.C. § 2241. (ECF No. 4.) Petitioner expressly states that he is filing a petition pursuant to § 2241 and that the court improperly construed this action as arising under § 2254. (ECF No. 5.)

The Ninth Circuit Court of Appeals has held that "28 U.S.C. § 2254 is the exclusive vehicle for a habeas petition by a state prisoner in custody pursuant to a state court judgment, even when the petitioner is not challenging his underlying state court conviction." *White v. Lambert*, 370 F.3d 1002,

1 1009-10 (9th Cir. 2004), *overruled on other grounds by Hayward v. Marshall*, 603 F.3d 546, 554 (9th
2 Cir. 2010). In this case, petitioner does not dispute that he is in custody pursuant to a state court
3 judgment. Therefore, petitioner may not proceed under § 2241, but may only proceed with a habeas
4 action in federal court under 28 U.S.C. § 2254. Accordingly, the court will provide petitioner one final
5 opportunity to submit his petition on the court-approved form for § 2254 actions. If petitioner fails to
6 provide the court with his petition using the court-approved form, this action may be dismissed and
7 closed.

8 **IT IS THEREFORE ORDERED** that the clerk shall **SEND** petitioner a set of forms for filing
9 § 2254 actions in this court, together with instructions for filing such forms. Petitioner shall have **forty-**
10 **five (45) days** from the date of the entry of this order within which to file a revised petition using only
11 the court-approved form. If petitioner fails to comply with this directive, this action shall be dismissed
12 and closed.

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14 Dated this 16th day of October, 2012.



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17 LARRY R. HICKS
UNITED STATES DISTRICT JUDGE